

Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Nathen Barton,

Plaintiff

v.

Serve All, Help All, Inc.

and

John Doe 1-10

Defendant(s).

Case No.: 3:21-CV-05338-BHS

MOTION TO STRIKE
AFFIRMATIVE DEFENSES

NOTE ON MOTION CALENDAR:
JAN 7, 2021

PLEASE TAKE NOTICE that Plaintiff Nathen Barton ("Barton") moves the Court to strike Affirmative Defenses of defendant Serve All, Help All, Inc.

I. INTRODUCTION

On May 7, 2021, Plaintiff filed an action captioned Nathen Barton v. Serve All, Help All, Inc. ("SAHA"). et al, in the United States District Court, Western District of Washington with cause number 3:21-cv-05338-BHS.

SAHA filed their Answer (Dkt. 21) on September 8, 2021.

In their answer, SAHA raised a number of Affirmative Defenses:

- 1 1. Failure to state a claim upon which relief can be granted.
- 2 2. Plaintiffs claims are brought without substantial justification, and the claims
- 3 are brought primarily for the purpose of harassment. Defendants seek an award of
- 4 attorney fees. *Hall v. Cole*, 412 U.S. 1, 5 (1973).
- 5 3. Accord and satisfaction.
- 6 4. Assumption of risk.
- 7 5. Consent.
- 8 6. Contributory negligence.
- 9 7. Estoppel.
- 10 8. Failure of consideration.
- 11 9. Failure to mitigate.
- 12 10. Fraud.
- 13 11. Indemnity or contribution.
- 14 12. Unclean hands.
- 15 13. Waiver
- 16 14. Service of Process.

17 II. DISCUSSION

18 Federal Rule of Civil Procedure 12(f) permits a court to “strike from a pleading an
19 insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” “The
20 function of a Rule 12(f) motion to strike is to avoid the expenditure of time and money that will
21 arise from litigating spurious issues by dispensing with those issues prior to trial.” *Solis v. Zenith*
22 *Capital, LLC*, No. 08–cv–4854–PJH, 2009 WL 1324051, at *3 (N.D. Cal. May 8, 2009) (citing
23 *Sidney–Vinstein v. A.H. Robins Co.*, 697 F.2d 880, 885 (9th Cir. 1983)).

Following the Supreme Court’s decisions in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), which announced a heightened pleading standard for complaints, the courts in this district have generally applied the *Twombly/Iqbal* pleading standard to affirmative defenses. See *Perez v. Gordon & Wong Law Group, P.C.*, No. 11-cv-03323-LHK, 2012 WL 1029425, at *8 (N.D. Cal. March 26, 2012) (collecting cases). “This standard ‘serve[s] to weed out the boilerplate listing of affirmative defenses which is commonplace in most defendants’ pleadings where many of the defenses alleged are irrelevant to the claims asserted.’” *Id.* (quoting *Barnes v. AT&T Pension Benefit Plan-Nonbargained Program*, 718 F. Supp. 2d 1167, 1172 (N.D. Cal. 2010)).

Insufficient Facts to be Plausible

Affirmative defenses must be supported by at least some facts indicating the grounds on which the defense is based. *Rosen v. Marketing Grp. LLC*, 222 F.Supp.3d 793, 802 (C.D.Cal. 2016).

None of the Affirmative Defenses are supported by a single fact, and all should be stricken.

Improper Affirmative Defenses

“A defense which demonstrates that plaintiff has not met its burden of proof is not an affirmative defense.” *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1088 (9th Cir. 2002). Rather, such a defense is “merely rebuttal against the evidence [to be] presented by the plaintiff” and, consequently, when pleaded as an affirmative defense, is “redundant” and may be stricken “so as to simplify and streamline the litigation.” *Barnes*, 718 F. Supp. 2d at 1173–74.

Affirmative Defenses #1 (Failure to state a claim upon which relief can be granted) and #2 (Plaintiffs claims are brought without substantial justification), are not actual defenses since it simply embodies the contention that Barton will be unable to prove the elements of the claims

1 contained in the Complaint. *J & J Sports Prods v. Mendoza-Govan*, No. 10-cv-05123-WHA,
 2 2011 WL 1544886 (N.D. Cal. Apr. 25, 2011) (“Failure to state a claim is not a proper affirmative
 3 defense but, rather, asserts a defect in the plaintiff’s prima facie case.”).

4 III. CONCLUSION

5 SAHA has recited a boiler-plate list of Affirmative Defenses which most judges in the 9th
 6 Circuit have found to be short of the appropriate pleading standard. For this reason alone, they
 7 should all be stricken from the Answer.
 8

9 /s/ Nathen Barton

10 Nathen Barton

12/16/2021

Dated

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14 IV. CERTIFICATE OF SERVICE

15 I hereby certify that on December 16, 2021, I electronically filed the foregoing with the
 16 Clerk of the Court using the Court’s CM/ECF System, which will automatically generate a
 17 Notice of Electronic Filing to all parties in the case who are registered users of the CM/ECF
 18 System, which includes the Defendant. The said Notice of Electronic Filing specifically
 19 identifies recipients of electronic notice.

20 Executed on December 16, 2021.

21 /s/ Nathen Barton

22 Nathen Barton